

Michigan Judges Association

Founded 1927

November 8, 2011

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TIMOTHY R. WARD

Mr. Corbin R. Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM file 2010-14
ADM file 2010-15
ADM file 2004-55
ADM file 2010-20

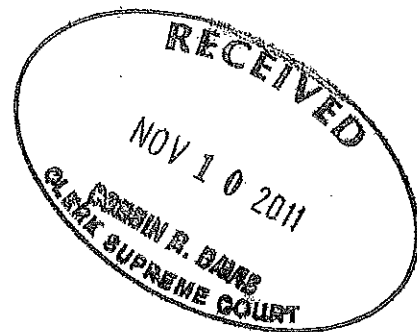
Dear Clerk Davis:

At the October 18, 2011 meeting of the Michigan Judges Association, the Executive Board along with the Rules and Family Law Committees considered the above-referenced proposed amendments published for comment.

MJA considered ADM file 2010-14, proposed adoption of New Rule 6.202 of the Michigan Court Rules. MJA does not support adoption of the rule as written since the procedure to avoid the appearance of witnesses having to testify at court regarding forensic testing already exists and provides that the parties can stipulate to its admission. The proposed rule would allow a defendant's constitutional right to confrontation to be waived by the failure of his or her attorney to file an objection within a set time frame. We are concerned that the defendant may not be properly advised of said procedure and will then raise it during or after trial causing delays.

MJA also considered ADM file 2010-15, a proposed amendment of Rule 6.005 of the Michigan Court Rules. We support the adoption of the proposed amendment as written.

MJA also considered ADM file 2004-55, a proposed amendment of Rule 3.3211 of the Michigan Court Rules. We support the adoption of the proposed amendment as written.



Letter to Corbin R. Davis
November 8, 2011
Page Two

MJA also considered **ADM file 2010-20**, a proposed amendment of Rule 6.302 of the Michigan Court Rules. We do not support the adoption of the proposed amendment as written. We recognize that the statute allows for the filing of a habitual offender notice after the taking of the plea, but the Court Rules also require that the defendant be advised of the possible maximum sentence he or she may face at the time the plea is taken. We would suggest that the rule be modified to indicate that if the habitual notice is not part of the plea agreement at the time a defendant enters a plea of guilty or no contest, the prosecutor will not be permitted to seek enhancement of sentence at the time of sentencing, even though they can file it after the plea.

We thank the Court for considering our input on these matters. Should you have any questions or concerns, please feel free to contact me, Judge Paul Stutesman, Chair of Rules Committee or Judge Joan Young, Chair of Family Law Committee.

Sincerely,

A handwritten signature in dark ink, appearing to read "Annette J. Berry". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Honorable Annette J. Berry, President
Michigan Judges Association

cc: Honorable Robert P. Young, Jr., Chief Justice, Michigan Supreme Court
Honorable Paul E. Stutesman, Rules Committee Chairperson,
Michigan Judges Association
Honorable Joan E. Young, Family Law Committee Chairperson,
Michigan Judges Association
Honorable Timothy G. Hicks, President-Elect, Michigan Judges Association
Ms. Anne M. Boomer, Administrative Counsel, Michigan Supreme Court